

1 AMY L. DOBBERTEEN  
Assistant Deputy Director, Bar No. 155111  
2 DEBRA L. DENTON  
Assistant Chief Counsel, Bar No. 164482  
3 PATRICIA STURDEVANT  
Senior Counsel, Bar No. 054681  
4 CALIFORNIA DEPARTMENT OF  
MANAGED HEALTH CARE  
5 Office of Enforcement  
980 Ninth Street, Suite 500  
6 Sacramento, CA 95814-7243  
Telephone: (916) 323-0435  
7 Facsimile: (916) 323-0438

8 Attorneys for Complainant

**FILED**  
DEC 10 2004

DEPARTMENT OF MANAGED HEALTH CARE

By Cha  
Filing Clerk

10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE  
11 OF THE STATE OF CALIFORNIA

12 IN THE MATTER OF:

13 AMERICAN ARC MANAGEMENT dba  
14 FAMILY HEALTH

15 Respondent.

} DMHC No.: 04-266

} OAH No.:

} **FIRST AMENDED CEASE AND  
DESIST ORDER**

} (Health and Safety Code sections 1349,  
1360, 1386, 1391 and 1395)

18 **TO: AMERICAN ARC MANAGEMENT CORPORATION dba FAMILY HEALTH**

19 The Director of the Department of Managed Health Care, by and through her  
20 designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as  
21 follows:

22 **I.**

23 **INTRODUCTORY STATEMENT**

24 1. California Health and Safety Code section 1349 requires certain entities  
25 arranging for health care services to first obtain a license from the California Department of  
26 Managed Health Care. Respondent is acting as a health care service plan, arranging for the  
27 provision of health care services, and accepting periodic payments. Accordingly, it is  
28 operating as a health care service plan as defined in Health and Safety Code section

1 1345(f)(1), and is required to obtain a license under the Knox-Keene Health Care Service  
2 Plan Act of 1975 ("Knox-Keene Act"). Respondent's failure to obtain a license subjects it to  
3 the enforcement powers of the Department of Managed Health Care.

4 2. Therefore, the Department of Managed Health Care, by the Order below,  
5 hereby directs Respondent to cease and desist from any further unauthorized, deceptive and  
6 unlawful activity in the State of California.

## 7 II.

### 8 STATUTORY AUTHORITY

9 3. The Director of the Department of Managed Health Care is vested with the  
10 responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of  
11 1975 ("Knox-Keene Act", Health and Safety Code section 1340, *et seq.*) The intent and  
12 purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical  
13 care to the people of California who enroll in a health care service plan by, among other  
14 things,

15 Prosecuting malefactors who make fraudulent solicitation or  
16 who use deceptive methods, misrepresentations, or practices,  
17 which are inimical to the general purpose of enabling a  
rational choice for the consumer public. (Health and Safety  
Code sections 1341 and 1342, subdivision (c).)

18 4. Health and Safety Code section 1345(f)(1) defines a health care service plan to  
19 mean:

20 Any person who undertakes to arrange for the provision of  
21 health care services to subscribers or enrollees or to reimburse  
22 any part of the cost for those services, in return for a prepaid  
or periodic charge paid by or on behalf of the subscribers or  
enrollees.

23 5. The Legislature has plainly evidenced its intent as to the application of the  
24 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

25 It is the intent of the Legislature that the provisions of this  
26 chapter shall be applicable to any private or public entity or  
27 political subdivision, which, in return for a prepaid or  
enrollee, provides, administers or otherwise arranges for the  
28

1 provision of health care services, as defined in this chapter,  
2 unless such entity is exempted from the provisions of this  
chapter by, or pursuant to, Section 1343.

3 Respondent is not exempted from the application of Health and Safety Code section 1343.

4 7. Any person conducting business as a health care service plan is required to  
5 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,  
6 which provides:

7 It is unlawful for any person to engage in business as a plan in  
8 this state or to receive advance or periodic consideration in  
9 connection with a plan from or on behalf of persons in this  
10 state unless such person has first secured from the director a  
license, then in effect, as a plan or unless such person is  
exempted by the provisions of Section 1343 or a rule adopted  
thereunder.

11 8. Untrue and misleading advertising and solicitation is prohibited by Health and  
12 Safety Code section 1360, which provides:

13 (a) No plan, solicitor, solicitor firm, or representative shall  
14 use or permit the use of any advertising or solicitation which  
15 is untrue or misleading, or any form of evidence of coverage  
which is deceptive. For purposes of this article:

- 16 1. A written or printed statement or item of information  
17 shall be deemed untrue if it does not conform to fact in  
any respect which is, or may be significant to an  
enrollee or subscriber, or potential enrollee or  
subscriber in a plan.
- 18 2. A written or printed statement or item of information  
19 shall be deemed misleading whether or not it may be  
literally true, if, in the total context in which the  
20 statement is made or such item of information is  
communicated, such statement or item of information  
21 may be understood by a person not possessing special  
knowledge regarding health care coverage, as  
22 indicating any benefit or advantage, or the absence of  
any exclusion, limitation, or disadvantage of possible  
23 significance to any enrollee, or potential enrollee or  
subscriber, in a plan, and such is not the case.

24 \* \* \*

25 (b) No plan, or solicitor, or representative shall use or  
26 permit the use of any verbal statement which is untrue,  
misleading, or deceptive or make any representations about  
27 coverage offered by the plan or its cost that does not conform  
to fact. All verbal statements are to be held to the same  
standards as those for printed matter provided in subdivision  
28 (a).

9. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

10. Health and Safety Code section 1395 further requires that:

...Any price advertisement shall be exact, without the use of such phrases as “as low as,” “and up,” “lowest prices” or words or phrases of similar import. ... Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable.

11. The Director is empowered to enforce compliance with this Act by Health and Safety Code section 1391, subdivision (a)(1), which provides in relevant part:

The director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the director pursuant to this chapter.

### III.

## VIOLETIONS OF LAW

12. Respondent is undertaking to arrange for the provision of health care services to members, either directly or through arrangements with others, in return for a periodic charge paid by the members, within the meaning of Health and Safety Code section 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for the provision of health care services within the meaning of Health and Safety Code section 1399.5. Respondent therefore is engaging in business as a health care service plan in this state and receiving advance and periodic consideration from or on behalf of persons in this state, without having first secured a license from the Director. This conduct violates Health and Safety Code section 1349.

13. Respondent's advertising and solicitation practices are misleading in violation of section 1360(a)(2) and (b) by using language typically associated with insurance coverage, and offering its health-care product in conjunction with insurance products.

14. Respondent is engaging in conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by section 17200 of the Business and Professions Code, in violation of Health and Safety Code section 1386(b)(7).

15. Respondent is engaging in prohibited price advertising using terms such as “up to,” in fraudulent, deceitful, or misleading advertising of non-existent discounts and of indefinitely extended limited-time offers in violation of Health and Safety Code section 1395.

#### IV.

## CEASE AND DESIST ORDER

Based on the foregoing, the Director finds that Respondent has violated Health and Safety Code sections 1349; 1360, subdivisions (a)(1), (a)(2), and (b); 1386(b)(7) and 1395.

**THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene Act:

**IT IS HEREBY ORDERED:**

1. That Respondent, and any of its directors, officers, trustees, managers, affiliates, agents, parent organizations, and all persons participating with them or acting in concert with them, shall immediately **CEASE AND DESIST FROM:**

- a. Operating in California without a Knox-Keene Act license.
- b. Any further deceptive or misleading advertisements or solicitations to California residents;
- c. Any enrollment activities in California for health-care memberships, including, but not limited to, medical, dental, hospitalization, and pharmacy;
- d. Taking, receiving, or forwarding any application for health-care memberships from California residents; and
- e. Collecting or receiving, in full or in part, any payments for any new or health-care memberships from or on behalf of California residents, as of the date of this order.

1           2.       Respondent shall disclose in any advertisement or solicitation that may  
2 reasonably be viewed by residents of the State of California, including but not limited to any  
3 Internet web page or advertisement, that its health care membership product is not available  
4 in the State of California.

5  
6 Dated: 12-10-04

LUCINDA EHNES, Director  
Department of Managed Health Care

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9  
10 By: 

11 AMY L. DOBBERTEN  
12 Assistant Deputy Director  
13 Office of Enforcement  
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